

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

APPHARVEST PRODUCTS, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 23-90745 (DRJ)

(Jointly Administered)

**NOTICE OF PROPOSED SALE OF DEBTORS' ASSETS,
BID PROCEDURES, AUCTION, AND SALE HEARING**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On July 26, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed with the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) a motion (the “Motion”) seeking, among other things, entry of an order: (i) approving the proposed bid procedures (the “Bid Procedures”) by which the Debtors will solicit and select the highest or otherwise best offer for sale of the Debtors’ Richmond/Morehead Assets, Somerset Assets, and Other Assets through a sales transaction (the “Sale Transaction”); (ii) scheduling an auction of the Assets and a hearing for the approval of the proposed Sale Transaction(s) (the “Sale Hearing”); (iii) approving the form and manner of notice for sale of the Assets, the Auction, and the Sale Hearing; (iv) approving procedures for the assumption or assumption and assignment of executory contracts or unexpired leases (collectively, the “365 Contracts”), and the Debtors’ calculation of the amount necessary to cure any monetary defaults under such 365 Contracts (the “Cure Amounts”); (v) authorizing the Sale Transaction(s) including, but not limited to, the assumption and assignment of the 365 Contracts; and (vi) granting related relief.

On August 25, 2023, the Bankruptcy Court entered the *Order (I)(A) Approving Bidding Procedures; (B) Approving the Selection of Stalking Horse Purchaser; (C) Approving the Debtors' Entry Into the Stalking Horse APA and Approving Bid Protections; (D) Scheduling Auctions and Sale Hearing; (E) Approving Form and Manner of Sale Notice; (F) Approving Form and Manner of Potential Assumption and Assignment Notice; (G) Approving the Form and Manner of Post-*

¹ The Debtors in this chapter 11 case, together with the last four digits of the Debtors’ federal tax identification number, are: AppHarvest Operations, Inc. (5929), AppHarvest, Inc. (2965), AppHarvest Farms, LLC (7067), AppHarvest Morehead Farm, LLC (1527), AppHarvest Richmond Farm, LLC (0632), AppHarvest Berea Farm, LLC (3140), AppHarvest Pulaski Farm, LLC (2052), AppHarvest Development, LLC (None), Rowan County Development, LLC (0700), AppHarvest Technology, Inc. (4868), AppHarvest Products, LLC (5929), and AppHarvest Foundation, LLC (None). The Debtor’s service address is 500 Appalachian Way, Morehead, KY 40351.

Auction Notice; (H) Approving Assumption and Assignment Procedures; and (II) Granting Related Relief [Docket No. 298] (the “Bid Procedures Order”).²

Description of the Assets

Richmond/Morehead Assets.

The Debtors will offer for sale the Richmond/Morehead Assets in accordance with these Bidding Procedures through the Richmond/Morehead Sale Transaction pursuant to a purchase agreement (the “Richmond/Morehead APA”). For the avoidance of doubt, with respect to the Richmond/Morehead Assets, to the extent the Debtors do not receive Qualified Bids for all of the Richmond/Morehead Assets, the Debtors reserve the right not to consider or otherwise to proceed to an Auction for such bids. For the further avoidance of doubt, with respect to the Richmond/Morehead Assets, (a) a bid solely for the Richmond Assets or solely for the Morehead Assets shall not be a Qualified Bid and (b) the Stalking Horse Bid is deemed to be a Qualified Bid. The Debtors reserve the right to not consider Qualified Bid(s) or to determine to not proceed to an Auction or Sale Hearing for such Qualified Bid(s) if the aggregate value of such Qualified Bid(s) does not exceed an amount necessary to, among other things, fund plan distributions and fund working capital.

Somerset Assets.

The Debtors will offer for sale the Somerset Assets in accordance with these Bidding Procedures through the Somerset Sale pursuant to a purchase agreement (the “Somerset APA”) for all of the Somerset Assets. For the avoidance of doubt, with respect to the Somerset Assets, to the extent the Debtors do not receive Qualified Bids for all of the Somerset Assets, the Debtors reserve the right not to consider or otherwise to proceed to an Auction for such bids. The Debtors reserve the right to not consider Qualified Bid(s) or to determine to not proceed to an Auction or Sale Hearing for such Qualified Bid(s) if the aggregate value of such Qualified Bid(s) does not exceed an amount necessary to, among other things, fund plan distributions, fund working capital, and secure the support of the Equilibrium.

Other Assets.

The Debtors will offer for sale the Other Assets in accordance with these Bidding Procedures through the Other Assets Sale pursuant to an asset purchase agreement (the “Other Assets APA”) of (a) all of the Debtors’ Other Assets; or (b) particular assets representing a portion of the Other Assets (each such bid, an “Other Assets Partial Bid”). For the avoidance of doubt, with respect to Other Assets Partial Bids, to the extent the Debtors do not receive Qualified Bids for all of the Other Assets, the Debtors reserve the right not to consider or otherwise proceed to an Auction or Sub-Auction for such bids. The Debtors reserve the right to not consider Qualified Bid(s) or to determine to not proceed to an Auction or Sale Hearing for such Qualified Bid(s) if the aggregate value of such Qualified Bid(s) does not exceed an amount necessary to, among other things, fund plan distributions, fund working capital, and secure the support of Equilibrium.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion, the Bid Procedures, and the Bid Procedures Order, as applicable.

Important Dates and Deadlines:

Bid Deadline:

A Qualified Bidder (as defined in the Bid Procedures) that desires to make a bid shall deliver a written or electronic copy of its conforming bid so as to be received no later than **August 28, 2023 at 4:00 p.m. (prevailing Central Time)** for bids on the Richmond/Morehead Assets, Somerset Assets, and Other Assets (the “Bid Deadline”). The Debtors may extend those deadlines for any reason whatsoever, in consultation with the Consultation Parties (as defined in the Bid Procedures).

Auctions:

If the Debtors receive two or more Qualified Bids with respect to the same Assets by the applicable Bid Deadline, the Debtors may, after consultation with the Consultation Parties, conduct an Auction to determine the Successful Bidder(s) (or Back-Up Bidder, as applicable) with respect to such Assets. In such event, the Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors’ business judgment, the highest or otherwise best Qualified Bid or combination of Qualified Bids for particular Assets (the “Starting Bid”). When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate and/or relevant to the value of the Qualified Bid to the Debtors’ estates: (a) the amount and nature of the total consideration; (b) the likelihood of the Qualified Bidder’s ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the Debtors’ estates from the transaction contemplated by the Bid Documents; and (d) the tax consequences of such Qualified Bid. Prior to the start of the Auction, the Debtors shall notify the Stalking Horse Purchaser and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Purchaser and each Qualified Bidder.

If an Auction is held, such Auction shall take place on **August 30, 2023**, via remote video and shall be conducted in a timely fashion according to the procedures set forth below (the “Auction Procedures”).

Assumption and Assignment of 365 Contracts:

The 365 Contracts proposed to be assumed or assumed and assigned to the Successful Bidder(s) or its designee in connection with the Sale Transactions will be identified in the Notice of Desired 365 Contracts.

Cure Objection Deadline:

Objections with respect to the Debtors' proposed Cure Amount shall be filed with the Bankruptcy Court not later than **4:00 p.m. (prevailing Central Time) on September 11, 2023.**

Sale Objection Deadline:

Objections (the "Sale Objections") to (i) consummation of a Sale Transaction, if any, (ii) the manner in which an Auction was conducted, (iii) the identity of a Successful Bidder or Back-up Bidder for the applicable Assets, (iv) the assumption and assignment of any applicable Assets, including any Desired 365 Contracts, (v) the Cure Amount (solely to the extent such objection is not subject to the applicable Cure Objection Deadline), and (vi) the ability of Successful Bidder(s) to provide adequate assurance of future performance to counterparties of Desired 365 Contracts, shall be filed with the Bankruptcy Court not later than **4:00 p.m. (prevailing Central Time) on August 31, 2023.** Any Objections not resolved prior to the Sale Hearing shall be argued at the Sale Hearing or such other time as set by the Bankruptcy Court.

Sale Hearing:

Unless the Debtors file and serve a revised notice, the Sale Hearing to approve the Sale Transaction(s) shall be held before the Bankruptcy Court before the Honorable David R. Jones on **September 6, 2023 at 2:30 p.m. (prevailing Central Time).** You may participate in the Sale Hearing either remotely by an audio and video connection or in person.

Remote Participation Instructions. If you wish to participate telephonically, you must use the Bankruptcy Court's teleconference system at **1-832-917-1510** and entering conference code **205691**. You may also join by videoconference by use of an internet connection, using the website www.gotomeeting.com, or by downloading the free GoToMeeting application. To connect, you should enter the meeting Code "**JudgeJones**" in the GoToMeeting app or click the link Judge Jones' home page on the Southern District of Texas website. Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting.

In Person Instructions. If you wish to attend the Sale Hearing in person, the Sale Hearing will be conducted at Courtroom 400, 4th floor, 515 Rusk, Houston, TX 77002.

Hearing Appearances. Hearing appearances must be made electronically in advance of the hearing. To make your appearance, click the "Electronic Appearance" link on Judge Jones homepage. Select the case name, complete the required fields, and click "Submit" to complete your appearance.

At such hearing, the Debtors will seek the entry of an order of the Bankruptcy Court approving and authorizing the sale(s) to the Successful Bidder(s) at the Auction on the terms and conditions of the Successful Bid(s). The Successful Bidder(s) shall appear at the Sale Hearing and be prepared to testify in support of the Successful Bid(s) and the Successful Bidder(s)' ability to close in a timely manner, including with respect to demonstrating adequate assurance of future performance that may be required in connection with the assumption and assignment of executory contracts and unexpired leases.

The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court, or by the Debtors in consultation with the Consultation Parties, but without further notice to creditors and parties in interest other than by announcement by Debtors of the adjourned date at the Sale Hearing.

The Debtors' presentation to the Bankruptcy Court for approval of a Successful Bid(s) does not constitute the Debtors' acceptance of the Successful Bid(s). The Debtors shall be deemed to have accepted Successful Bid(s) only when the Successful Bid(s) has been approved by order of the Bankruptcy Court.

Nothing herein will be deemed a waiver of any rights of the Debtors or any other parties in interest to contest any rights asserted by any person in such objections, and all such rights of the Debtors are expressly preserved.

Additional Information

Any party wishing to submit a bid should contact the Debtors' proposed investment bankers at the following: Jefferies LLC, 520 Madison Avenue, New York, NY 10022 Attn: Rich Morgner (rmorgner@jefferies.com); Stephen Gavalas (sgavalas@jefferies.com); Derk van der Erve (dvandererve@jefferies.com); Christopher Hanley (chanley@jefferies.com); and Philip Engel (pengel@jefferies.com).

Copies of the Motion, the Bid Procedures Order, and the Bid Procedures may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent, Stretto, Inc., located at <https://cases.stretto.com/appharvest/>.

FAILURE TO ABIDE BY THE BID PROCEDURES, THE BID PROCEDURES ORDER, OR ANY OTHER ORDER OF THE BANKRUPTCY COURT IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID.

ANY PARTY WHO FAILS TO FILE WITH THE BANKRUPTCY COURT A SALE OBJECTION BY THE SALE OBJECTION DEADLINE MAY BE FOREVER BARRED FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY OBJECTION TO THE CONSUMMATION AND PERFORMANCE OF THE APPLICABLE SALE TRANSACTION CONTEMPLATED BY THE APPLICABLE PURCHASE AGREEMENT WITH A SUCCESSFUL BIDDER(S), INCLUDING THE TRANSFER OF THE DEBTORS' ASSETS TO THE SUCCESSFUL BIDDER(S), FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES PURSUANT TO SECTIONS 363(f), 1123, AND 1129, AS APPLICABLE, OF THE BANKRUPTCY CODE.

Dated: August 25, 2023
Houston, Texas

/s/ Matthew D. Cavanaugh

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